

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.777 OF 2003
IN
SUMMARY SUIT NO.3064 OF 2002

Chandraprakash T. Jain Plaintiff

versus

Pravinkumar H. Jain Defendant

Ms.Kavita A. Shah for plaintiff

None for defendant

CORAM : S.C.DHARMADHIKARI, J.

DATE : 28th June 2005

PC :

1. The plaintiff's advocate is present. None appears for the defendant although name of defendant's advocate is duly shown on the board. Defendant has filed an application/affidavit in reply. It is in these circumstances that I have proceeded to hear the Summons for Judgement. With the assistance of learned advocate for plaintiff, I have perused the affidavit filed in reply. Defendant's advocate was not present even on the last occasion when the matter appeared, before the Vacation.

2. The plaintiff has filed present suit as a summary suit claiming decree in a sum of Rs.1.60 lakh with further interest on Rs.1,05,347/- @ 24% p.a. from the date of suit till payment and/or realisation. It is contended that suit is based on written contract evidenced by 26 invoices and delivery challans under which goods were sold, supplied and delivered. The goods have been received and there is no protest lodged insofar as their quality, quantity and price. Part payments, as evidenced in para 4, have been made and due credit has been given for the said payment. Ultimately, a sum of Rs.1,05,347/- was payable and that claim is admitted. Reliance is placed upon a letter/writing at Exhibit-B at the foot of which the plaintiff states that insofar as above mentioned 26 invoices are concerned, out of Rs.1,75,347/-, he has paid Rs.70,000/- and the balance is Rs.1,05,347/-. Thus, he confirms the balance and acknowledges liability. Reliance is placed on the stipulation with regard to payment of interest and that is how the decree is claimed.

3. Reply affidavit/application for leave to defend is filed in which the first contention is

that the amounts as claimed in the suit, have been paid in cash and nothing is due and payable. It is contended that the defendant maintains register of such payment. However, it is pertinent to note that no extract is either annexed nor other details pertaining to such register are furnished. Secondly, it is contended that the dues of some other firms are sought to be foisted on the defendant by plaintiff. Receipt/writing (Exhibit-B) is not denied. However, it is stated that it is not addressed by the defendant. The third defence is that the suit claim is time barred.

4. In the rejoinder affidavit it is pointed out by the plaintiff that there is no question of not accounting for payment in cash. In fact, some amount by way of part payment was made in cash and due credit was given even for such payments and it is thereafter that the receipt has been signed acknowledging the liability. The plaintiff has denied that he is in way connected with the firm which is mentioned in para 2 of the affidavit in reply.

5. In my view, no substantial defence is raised. However, with a view to give defendant a chance

to substantiate and prove his case that payment was made by cash and to produce necessary documents, conditional leave to defend is granted on the defendant depositing in this Court a sum of Rs.1,05,347/- within a period of eight weeks from today. Suit transferred to the list of commercial causes with usual directions to file written statement, discovery and inspection.

(S.C.DHARMADHIKARI, J.)